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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/334,891	06/17/99	GHISOLFI	G 32461/GM/1P

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ITALY

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AIR MAIL

EXAMINER

PATTERSON, M

ART UNIT

PAPER NUMBER

1772

DATE MAILED:

08/28/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/334,891

Applicant(s)

GHISOLFI, GUIDO

Examiner

Marc A Patterson

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

REPEATED REJECTIONS

1. The 35 U.S.C. 103(a) rejection of Claims 1 – 21 as being unpatentable over Martin, Jr (U.S. Patent No. 4,806,398). in view of Joosten (European Patent No. 0232818), Ochi et al . and The Encyclopedia of Polymer Science and Engineering. (Volume 12, page 214, 1985) is repeated.

ANSWERS TO APPLICANT'S ARGUMENTS

2. Applicant's arguments concerning the 35 U.S.C. 103(a) rejection of Claims 1 – 21 as being unpatentable over Martin, Jr. in view of Joosten, Ochi et al. and The Encyclopedia of Polymer Science and Engineering. (Volume 12, page 214, 1985) have been carefully considered but have been found to be unpersuasive for the reasons set forth below.

Applicant argues, on page 2 of Paper No. 7, that the rejection is improper because there is no motivation to combine Joosten et al. with Martin Jr. Although Joosten et al. teach that foamed thermoplastic and paperboard are equivalent in the juice container disclosed by Joosten, Applicant contends, the juice container which is disclosed by Martin Jr. has a different multilayer structure than the container which is disclosed by Joosten, and Joosten does not teach that foamed thermoplastic and paperboard are equivalent in the juice container which is disclosed by Martin, Jr. However, as stated in the previous Action, Martin Jr. discloses a multilayer juice container having a substrate which comprises paperboard. Joosten teaches that in the fabrication of a juice container, foamed thermoplastic sheet is equivalent to paperboard as a substrate layer (central bulk

layer; Abstract) for the purpose of making a heat – sealable container (Abstract). It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for foamed thermoplastic sheet in Martin Jr. in order to make a heat – sealable container as taught by Joosten.

Applicant also argues that Joosten does not specifically teach the use of a polyester layer as the thermoplastic layer thus there is no teaching or suggestion that foamed polyester can be used for obtaining the material of Joosten. The term 'thermoplastic' certainly includes polyester, however, therefore it is not necessary for polyester to be specified by Joosten.

Applicant also argues, on page 3, that obtaining a recyclable material cannot be a motivation for replacing the paperboard of Martin Jr. with a foamed polyester resin sheet, since the material obtained would not be recyclable for the presence of the polyethylene layer in Martin, Jr. However, the claimed invention is not directed to a multilayer material in which every layer is recyclable; it is directed to a multilayer material which is 'recyclable;' the claimed invention therefore includes, broadly speaking, multilayer materials in which a single layer is recyclable. Obtaining a recyclable material therefore provides motivation for the combination of Martin Jr. with Joosten.

Applicant also argues, on page 4, that Ochi et al. do not teach a container used for non – solid beverages, as is claimed in Claim 1. However, the intended use of the container, for the containment of beverages, is given little patentable weight; furthermore the adhesive which Ochi et al. contains is a hot – melt adhesive, so that it is a solid at room temperature but is also contained in the molten (non – solid) state prior to pouring (Abstract).

Applicant further argues, and submits a declaration in support of the argument, that the container taught by Ochi et al. cannot be folded along the lines of a pattern creased on it without breakage. However, as stated in the previous Action, Ochi et al. clearly teach a container which is folded (formed into a box shaped container by folding) along lines of a pattern creased on it (folding lines which are impressed on the unfolded sheet; Abstract).

Applicant further argues that although the Encyclopedia of Polymer Science and Engineering teaches that polyethylene terephthalate – isophthalate copolymer can be used instead of polyethylene terephthalate as the outer layer of a heat sealable film, it does not teach or suggest a material comprising a polyester film adhered to a foamed polyester sheet as in the claimed invention. The previous Action only stated, however, that it would have been obvious to one of ordinary use polyethylene terephthalate – isophthalate copolymer can be used instead of polyethylene terephthalate as the outer layer of a heat sealable film in Martin Jr. as taught by the Encyclopedia of Polymer Science and Engineering.

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Patterson, whose telephone number is (703) 305-3537. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by phone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached at (703) 308-2364. FAX communications should be sent to (703) 305-3599. FAXs received after 4 P.M. will not be processed until the following business day.

M.A.P.

mar


HAROLD PYON
SUPERVISORY PATENT EXAMINER

1772

8/27/01